IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10048 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATUBHAI KANABHAI VALA

Versus

GUJARAT INSTITUTE OF CIVIL ENGINEERS AND ARCHITECTS

Appearance:

1. Special Civil Application No. 10048 of 2000

MR AG VYAS for Petitioner No. 1

MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/02/2002

ORAL JUDGEMENT

Heard learned advocate Mr. A.G. Vyas for the petitioner and Mr. D.R.Dave for the respondent. In the present petition, the petitioner has challenged the order

passed by the labour court concerned in Misc. Application No. 80 of 1999 dated 16th February, 2000 wherein the labour court has allowed the miscellaneous application and has set aside the ex parte order passed in the recovery application no. 267 of 1994 dated 17th November, 1998 and restored the original recovery application and has directed to decide the merits of the matter and the matter has been fixed by the labour court on 29th March, 2000. Initially, this court issued rule returnable on 17th October, 2000 by order dated 25th September, 2000.

Learned advocate Mr. Vyas appearing for the petitioner has submitted that the respondent has adopted delay tactics not to proceed with the recovery application filed by the petitioner; initially, the respondent had engaged advocate and after some time, the advocate engaged by the respondent retired from the proceedings and thereafter, the labour court had issued notice to the respondent which was served upon the respondent and yet, the respondent has not taken care to remain present before the labour court and therefore, the labour court was having no option but to proceed ex parte and has, therefore, passed ex parte order. He further submitted that there was delay in filing an application for restoration before the labour court. He has further submitted that it is not correct that the order dated 17th November, 1998 was received by the respondent on 1st March, 1999 because there was no proof to that effect before the labour court and, therefore, there was delay in filing such an application and yet the labour court has condoned the same without any justification. He has submitted that the labour court has erred in not believing the facts of the workman that the order in question was received by the respondent prior to 1st March, 1999. According to him, the respondent was given sufficient opportunity which was not availed by him and, therefore, the labour court ought not to have restored the matter and ought not to have given an opportunity to participate in the proceedings and, therefore, the order in question restoring recovery application is required to be quashed and set aside. He has relied upon the decision of the Calcutta High COurt reported in AIR 1978 Calcutta page 516 which is relating to delay in filing an application under Order 22, Rule 4 and 9 of the Code. He has also relied upon the decision of the apex court reported in AIR 1987 SC 45 wherein the apex court has considered about delay in preferring Special Leave Petition. Relying upon the aforesaid decisions, he has submitted that the labour court has committed an error in allowing the application filed by the respondent. He has

also submitted that the respondent has not explained the delay before the labour court and, therefore, the labour court ought not to have condoned the delay and ought not to have passed the impugned order.

Learned advocate Mr. D.R.Dave appearing for the respondent has, on the other hand, submitted that there is no question of delay in preferring such an application because the order was received by the respondent on 1st March, 1999. This aspect has been considered by the labour court in para 8 of the order in question and considering the original record, the labour court has considered the forwarding letter and the original order which was sent to the respondent. In the forwarding letter itself, date is mentioned that the order in question was received by the respondent on 1st March, 1999. These findings recorded by the labour court are based upon the original record and, therefore, he has submitted that there is no question of delay in filing such an application and, therefore, the decisions relied upon by the learned advocate for the petitioner are not applicable to the facts of the present case. According to him, there is nothing wrong if an opportunity is given to the respondent to participate in the proceedings before the labour court for deciding the matter on merits. He has submitted that after receiving notice from the labour court, the respondent has immediately engaged advocate and written statement accompanied by the documentary evidence was filed before the labour court but all of a sudden, advocate Shri Shah who was then appearing before the labour court had retired from the proceedings and therefore, respondent cannot be said to be negligent in not remaining present before the labour court. According to him, after considering all these aspects, order in question was passed by the labour court and, therefore, order in question is quite just, proper and valid order based upon appreciation of the evidence on record and, therefore, this Court should not interfere with such order in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have also perused the order in question and have considered the decisions relied upon by the learned advocate for the petitioner. According to my opinion, question of delay does not arise looking to the findings recorded by the labour court that the original order was sent to the respondent by forwarding letter and has after perusing the forwarding letter, recorded its finding that the order in question was received by the respondent on 1st March, 1999.

The question ultimately required to be considered by this COurt is to the effect that reasonable opportunity is necessary though there was some fault on the part of the respondent. After receiving notice from the labour court after the retirement of his advocate from the proceedings before the labour court, the respondent has not taken care to remain present before the labour court either in person or through another advocate nor has it taken any care to move the labour court for some time for engaging the another advocate. These are the lapses on the part of the respondent before the labour court which has ultimately resulted into an ex parte order which has subsequently been set aside by the labour court and, therefore, present petition has been filed by the petitioner before this Court. I have considered all these aspects of the matter. I have perused the impugned order passed by the labour court. According to my opinion, the labour court was right in granting one more opportunity to the respondent for deciding the matter on merits and for allowing him to participate in the proceedings for deciding the matter on merits by restoring the matter of recovery application and fixing its date for hearing. According to my opinion, in exercising the jurisdiction under Rule 26-A of the Industrial Disputes Act (Gujarat) Rules, 1966, the labour court has not committed any error in setting aside such an ex parte order and, therefore, according to my opinion, no interference is required while exercising the powers under Article 226 and/or 227 of the Constitution of India.

However, it is required to be noted that there was some fault on the part of the respondent in not taking care for making proper arrangement after service of the notice from the labour court after the retirement of his advocate from the proceedings before the labour court. Therefore, according to my opinion, some amount of costs is required to be imposed upon the respondent. At the same time, labour court concerned is also required to decide the recovery application within some reasonable period in the facts and circumstances of the case.

Therefore, it is directed to the respondent herein to pay to the petitioner an amount of Rs. 5000.00 by way of cost within fifteen days from today and to obtain receipt from the petitioner for payment of such cost. Labour court, Ahmedabad is also directed to decide the recovery application finally on merits after giving reasonable opportunity to the parties to the proceedings before it within three months from the date of receipt of

copy of this order. Both the parties are directed to cooperate at the hearing before the trial Court. With these observations and directions, this petition is dismissed. Rule is discharged.

21.2.2002. (H.K. Rathod,J.)
Vyas